IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2722 OF 2005

Govind Laxmanrao Edke,
Age 55 years,
resident of 27-A, Suvinay Building
3rd Floor, Thanagewadi,
Near Maruti Mandir, Syndicate,
Murbad Road, Kalyan (W),
District Thane, Maharashtra .. Petitioner

V/s

1.The State of Maharashtra
through Department of Law & Judiciary,
Mantralaya, Mumbai

2.The Hon'ble the Chief Justice of
the High Court of Judicature at Bombay
Fort, Mumbai

3.The Registrar General, High Court,
Fort, Mumbai 400 023. .. Respondents

Mr.A.Y.Sakhare, Senior Advocate with Mr.Dilip Taur and Mr.S.D.Nadkarni for the Petitioner.

Mr.A.A.Kumbhakoni, Associate Advocate General with Mrs.M.P.Thakur, AGP for Respondent Nos.1 to 3.

CORAM : B.H.MARLAPALLE & NARESH H.PATIL, JJ
DATE : 14th September, 2006.

JUDGMENT :-

1. This petition filed under Article 226 of the Constitution challenges the order of compulsory retirement dated 3.11.2004 passed under Rule 10(4)(a)(i) of the Maharashtra Civil Services (Pension) Rules, 1982 (for short "Pension Rules") on the recommendations of the High Court on its administrative side.

2. The Petitioner had entered the judicial service in terms of his first appointment as a Civil Judge, Junior Division and Judicial Magistrate, First Class in June, 1980 and was

promoted as a Civil Judge, Senior Division in the year 1989. He was further promoted as an Additional District & Sessions Judge in June, 1994. After having worked for about nine years in the Mofussil Judiciary as an Additional District and Sessions Judge the Petitioner was posted as a Judge in the City Civil & Sessions Court at Mumbai, and while he was holding the said post, was compulsorily retired by the impugned order passed by the State Government.

3. As per the Petitioner, his disposal record on becoming the Additional District Judge was satisfactory in the year 1994, inadequate in the year 1995 & 1996 and thereafter till August, 2000 it was either satisfactory or noteworthy. He submits that his disposal record in April, 2001 was deemed to be inadequate, in August 2001 it was inadequate, in December 2001 it was satisfactory, in April 2002 it was again inadequate. He also claims that there was nothing adverse ever recorded regarding his character, integrity or general standing as a judicial officer and at no point of time any adverse remarks were communicated to him. He claims that his entire service record was clean and he always discharged his duty diligently and honestly. He contends that the order of compulsory retirement is bad in law and there was no material before the High Court on its administrative side to recommend his compulsory retirement under Rule 10 (4) (a) (i) of the Pension Rules. He also contends that if the power of compulsory retirement is invoked in public interest there should be some material available on record so as to come to the conclusion or form

an opinion that it is in the public interest to retire the Petitioner. The Petitioner therefore claims that if the entire service record is taken into consideration, the order of compulsory retirement will not find support.

4. The Registrar (Legal), on the Appellate Side of this Court has filed an affidavit in reply and so has the under Secretary in the Law & Judicial Department, Government of Maharashtra on behalf of the Respondent No.1 State.

5. Mr.Sakhare, the learned Senior Counsel in support of the challenge to the impugned order of compulsory retirement, has placed reliance on the decision of this Court in the case of **D.R.Shelke V/s.State of Maharashtra and Ors. 1996 (1) Mh.L.J.699** and the following decisions of the Supreme Court:-

Baldev Raj Chadhda V/s.Union of India & Ors.- (1980) 4 SCC 321.

State of Gujarat V/s.Umedbhai M.Patel - (2001) 3 SCC 314.

Madan Mohan Chaudhary V/s. State of Bihar & Ors. - (1999) 3 SCC 396.

6. In addition, the learned Senior Counsel also referred to the Government Resolutions published from time to time regarding writing of Annual Confidential Reports as well as the guidelines to be followed for invoking the power under Rule 10(4) of the Pension Rules.

7. There is no doubt that the Petitioner has entered the judicial service before attaining the age of 35 years. Rule

10(4) of the Pension Rules reads as under:-

> "Notwithstanding anything contained in sub-rules (1) and (2) of this rule, the appropriate authority, if it is of the opinion that it is in the public interest so to do, by giving notice of three months in writing in Form 30 or in Form 31, as the case may be, or three months pay and allowances in lieu of such notice, have the absolute right to retire-
>
> (a) any Gazetted Government servant under the rule making control of the State Government:-
>
> (i) if he had entered Government service under any Government in India, before attaining the age of thrity five years, after he has attained the age of fifty years, and
>
> (ii) in any other case, after he has attained the age of fifty-five years;
>
> Provided that a Government servant who holds a Class III post in a substantive capacity but is holding a Class I or Class II post in an officiating capacity, shall, in case it is decided to retire him from service while holding a Class I or Class II post, in the public interest, be allowed on his request in writing to the appropriate authority to continue in service in Class III post which he holds in a substantive capacity.
>
> (b) any Government servant who holds a post in Class III service of the State, either pensionable or non-pensionable, after he has attained the age of fifty-five years;
>
> (c) any Government servant who holds a post in Class IV service of the State and who is recruited in Government service on or after the 21st September, 1970, after he has attained the age of fifty-five years.

8. When the impugned order dated 3.11.2004 was passed, the Petitioner had attained the age of 54 years & 5 months i.e. he was above 50 years and therefore, he could have been subjected to a review after attaining the age of 50 years as well as 55 years for invoking the power of compulsory retirement in public interest, under Rule 10(4) of the Pension Rules.

9. Mr.Kumbhakoni, the learned Associate Advocate General appearing for the Respondents referred to the juudgment of this Court in the case of **R.W.Khan V/s.State of Maharashtra & Another - 1996 (1) Mh.L.J.899** as well as the following judgments of the Supreme Court:

Meghraj Urkudaji Tempe V/s.State of Maharashtra - (1998) 7 SCC 319.

Chandra Singh & Ors. V/s.State of Rajasthan & Anr. (2003) 6 SCC 545.

10. By referring to the affidavit in reply filed by the **Registrar (Legal)** of this Court, Mr.Kumbhakoni, the learned Associate Advocate General has pointed out that the service record of the Petitioner, from the time he was promoted to the post of Additional District Judge in the year 1994, was taken into consideration and for majority of the years he was rated as an "average" officer, and his disposal was grossly inadequate for cuople of years and his reputation and character was not upto mark. So far as integrity is concerned, it has been pointed out by the Registrar in his affidavit in reply that initially he was found to be an officer required to be watched and subsequently it was noted that he did not come up to the requirements of a judicial officer. It was also further contended before us while repelling the challenge to the order of compulsory retirement, that all the procedural requirements were duly complied with and while recommending the petitioner to compulsory retirement the

High Court proceeded solely on the basis of the recommendations made by the Review Committee consisting of five Hon'ble Judges of this Court.

11. The law on compulsory retirement in public interest is well settled. In the case of **Baikuntha Nath Das V/s.Chief District Medical Officer - (1992) 2 SCC 299** a three Judge Bench, following the earlier decision in the case of **Union of India V/s.Col.J.N.Sinha - (1970) 2 SCC 458**, held;

> (i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.
>
> (ii) The order has to be passed by the Government on forming the opinion that it is in public interest to retire a Government servant compulsorily. The order is passed on the subjective satisfaction of the Government.
>
> (iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an Appellate Court, they may enterfere if they are satisfied that the order is passed (a) malafide or (b) that it is based on no evidence or (c) that it is arbitrary - in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.
>
> (iv) The Government or the Review Committee as the case may be shall have to consider the entire record of service before taking a decision in the matter - of course attaching the more importance to record of and the performance during the later years. The record to be so considered would naturally include the entries in the confidential records/ character rolls both favourable and adverse. If a Government servant is permitted to the higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.
>
> (V) An order of compulsory retirement is not liable

> to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. The circumstance by itself cannot be a basis for interference.

. In the case of **State of Gujarat V/s.Umedbhai M. Patel (supra),** the Supreme Court summed up the law relating to the compulsory retirement in the following words:

> (i) Whenever the services of a public servant are no longer useful to the general administration, he can be compulsorily retired for the sake of public interest.
>
> (ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.
>
> (iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.
>
> (iv) Any adverse entries made in the confidential record shall be taken note of and be given due weight in passing such order.
>
> (v) Even uncommunicated entries in the confidential record can also be taken into consideration.
>
> (vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.
>
> (vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.
>
> (viii) Compulsory retirement shall not be imposed as a punitive measure.

12. While placing before us the service record of the petitioner for the years 1994-95 onwards it was stated that the Annual Confidential Reports of the officers in the post of Additional District Judges onwards and forming the cadre of District Judges are written by the

Committee of five Hon’ble Judges of this Court constituted by the Hon’ble Chief Justice. The file placed before us shows that the Petitioners Annual Confidential Reports have been written by such Committees for the year 1994-1995 onwards. In terms of his overall performance, the Committee of five Hon’ble Judges has assessed the Petitioner as an "average" officer. For the years 1998-1999, 1999-2000 he has been rated as "good" on overall performance, but for the subsequent three years i.e.2000-2001, 2001-2002 and 2002-2003 he has been rated to be an "average" officer. So far as his integrity is concerned, the Committee for the first five years from 1994-1995 to 1997-1998 recorded in the said column as "needs to be watched", and similarly for the three years from 2000-2001 to 2002-2003 the Committee did not find his integrity to be satisfactory. The Government of Maharashtra issued Circular on 12.5.1986 laying down the bench mark for complsory retirement for class I and Class II Officers and the revised bench mark in the said Circular is "not below good". Out of the service of ten years in the cadre of District Judge, the Petitioner has been rated to be "below good" for eight years by the Committee of five Hon’ble Judges of this Court and we have already recorded the views of the Committee regarding the Petitioner’s integrity during this period of 10 years. We have also noted the unsatisfactory disposal record atleast towards the end, i.e. for the quarters ending on April 2001, August 2001, April 2002 and August 2002.

13. In the case of **R.W.Khan (supra),** the ACR's for the year ending on 31st March, 1990 had rated him "poor" and his integrity was found to be "doubtful". The Division Bench summarised the service record of the petitioner in that case during the period of five years prior to compulsory retirement in the following words:-

> As far as Annual Confidential Reports are concerned, for the year ending 31st March, 1990 the officer has been rated "poor" and integrity "doubtful" and he needs to be watched. Similar is the situation in relation to the year ending on 31st March, 1991. These A.C.Rs. are written by the Committee of five Senior Judges of this Court. President, Industrial Court, Maharashtra wrote confidential reports of the Petitioner as the petitioner was working under him as a member, Industrial Court on ex-cadre post from 1.4.1992 to 31.10.1992. The Petitioner has been rated as "average" and integrity as "doubtful". For the remaining period, that is to say, from November 1992 to 31st March 1993 the officer has been rated again as "average". For the year 1st April 1993 to 30th November 1993, the Petitioner has again been rated "average" by the President, Industrial Court, and in the column of integrity, impartiality and character it is recorded that the promotion is withheld by the High Court. From the aforesaid it is clear that the officer has been rated as "poor" and "average" and what is more, throughout his integrity is held doubtful. In our opinion, in no manner the decision of the Review Committee and the Committee of the Administrative Judges could be faulted with when the record of the officer is poor and average since 1990 and integrity "doubtful".

14. In the case at hands, we have referred to the petitioner's service record for 10 years and having gone into the ACR's as written by the Committee of five Hon'ble Judges of this Court, we do not find any substance in the challenge raised to the order of compulsory retirement. We have seen that the views of the Committees all along have been unanimous. The

Petitioner, on an overall assessment, was found an "average" officer by the Committees. The circular dated 12.5.1986 laying down the bench mark of "not below good" is thus followed in the case of the Petitioner.

15. Mr.Sakhare, the learned Senior Counsel appearing for the Petitioner advanced the grievance that the record placed before this Court viz.the ACR's written by the Committees of five Hon'ble Judges, is not accessible to the Petitioner and even during the course of arguments it is not shown to him. As noted earlier, the law on compulsory retirement in public interest is well settled. The order of compulsory retirement is not punitive and the principles of natural justice are not applicable. So long as the service record was placed before the Court and the Court has perused the same, we are satisfied that there is no miscarriage of justice, if the very same record is not shown to the Petitioner's Counsel in the Court.

16. In the premises, this Petition must fail at the threshhold and the same is hereby rejected summarily.

(NARESH H.PATIL,J.) **(B.H.MARLAPALLE, J.)**